

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SENARBLE CAMPBELL,

Plaintiff,

v.

ASHLEY SMITH, et al.,

Defendants.

No. 2:21-cv-01172-CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. On October 13, 2021, the court ordered plaintiff to complete service paperwork for defendant Ashley Smith as no individual by that name was identified as being employed as a psychologist at Mule Creek State Prison. ECF No. 14. Plaintiff returned the completed service forms to the court on or about October 29, 2021. ECF No. 17. The court has reviewed the completed service paperwork and has identified two separate problems with the forms. First, plaintiff listed defendant as “Scott Smith” on all of the service forms even though the complaint identifies this defendant as “Ashley Smith.” See ECF No. 1. Second, the service address that plaintiff provided is Mule Creek State Prison. However, a waiver of service of process has already been attempted with that address. See ECF No. 11. It is unclear to the court whether plaintiff simply confused the name of the two defendants in this case


(i.e. Ashley Smith and Scott Ivey) or if he is attempting to provide additional identifying information for defendant Smith in order to effect service of process. In either circumstance, the court will not forward the service paperwork to the United States Marshal until plaintiff fixes the problems with the service forms. Plaintiff has the option to: 1) complete the attached USM-285 form in the name of Ashley Smith with a service address that is not Mule Creek State Prison; or, 2) plaintiff may file a motion to amend along with a proposed amended complaint that correctly identifies each defendant if plaintiff has obtained new information concerning the identity of defendant Smith.

A further review of the docket indicates that plaintiff filed a motion to reconsider the magistrate judge's denial of his motion for the appointment of counsel. ECF No. 18. Since no district judge has been assigned to this case to review plaintiff's motion to reconsider, the court will direct the Clerk of Court to randomly assign this matter to a district court judge.

Accordingly, IT IS HEREBY ORDERED that:

1. The Clerk of Court shall randomly assign this matter to a district court judge.
2. In addition, the Clerk of the Court is directed to return the copies of the complaint submitted by plaintiff on October 29, 2021 along with one USM-285 form.
3. Within thirty days from the date of this order, plaintiff shall submit to the court a completed USM-285 for defendant Smith along with two copies of the complaint filed on June 30, 2021 if he intends to proceed on the complaint against defendant Ashley Smith.
4. Alternatively, plaintiff may choose not to return the service forms, but instead file a motion to amend along with a proposed first amended complaint within 30 days from the date of this order if defendant's true name is not Ashley Smith.
5. Plaintiff's failure to respond to this order by selecting one of the options identified above will result in a recommendation that defendant Smith be dismissed from this action without prejudice for failure to affect timely service of process. See Fed. R. Civ. P. 4(m).

Dated: December 1, 2021

  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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